

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Luxama	Team: Team # 5	CCRB Case #: 201014261	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/18/2010 9:00 AM	Location of Incident: West 230th Street and Broadway	Precinct: 50	18 Mo. SOL 4/18/2012	EO SOL 4/18/2012	
Date/Time CV Reported Mon, 10/18/2010 12:45 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/18/2010 12:45 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Acosta	11677	924863	PBBX TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Maritza Acosta	24020	927886	PBBX TF
2. SGT Alberto Martinez	05098	897976	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Acosta	Force: PO Daniel Acosta used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On October 18, 2010, § 87(2)(b) filed the following complaint on behalf of her daughter, § 87(2)(b) did not witness this incident.

On October 18, 2010, at approximately 9:20 a.m., at West 230th Street and Broadway in the Bronx, § 87(2)(b) was walking to school when she was stopped by PO Daniel Acosta. The following allegations resulted:

- **Allegation A – Force: PO Daniel Acosta used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

CCRB Statement

On November 19, 2010, § 87(2)(b) was interviewed at the Civilian Complaint Review Board (encl. 5a-d). § 87(2)(b)'s telephone statement and formal interview were consistent (encl. 4). On October 18, 2010, at approximately 9:20 a.m., § 87(2)(b) walked out of a store with her friend § 87(2)(b) at West 230th Street and Broadway in the Bronx. § 87(2)(b) was purchasing her lunch at this store and she was approximately fifteen minutes late for school. This store is two blocks from her high school. At the time of this incident, § 87(2)(b) attended § 87(2)(b) located at § 87(2)(b) in the Bronx.

As soon as § 87(2)(b) walked out of the store, she noticed a truancy police officer standing next to a double parked marked van in the street. There is usually a truancy van at the corner of this store. There were two boys already in the van and a female student named Brandis (last name unknown) in the van. PO Daniel Acosta (described by § 87(2)(b) as a Hispanic, male, 48-50 years-old, 180lbs, 5'6", dressed in uniform), who was identified through a summons, said, "Excuse me ladies, can y'all come over here" while he approached her. § 87(2)(b) ignored PO Acosta. PO Acosta then asked her what she thought she was doing. § 87(2)(b) continued walking to school. PO Acosta grabbed § 87(2)(b) by her left arm. § 87(2)(b) pulled her arm away and asked PO Acosta what he was doing. PO Acosta stood in front of § 87(2)(b) and with both hands grabbed her sweater at her chest. PO Acosta turned § 87(2)(b) around and she lost her balance and fell on her knees. § 87(2)(b) suspected that PO Acosta was going to handcuff her. However, PO Acosta again grabbed her sweater at her chest and pulled her to a nearby car and slammed her on the rear of this car. § 87(2)(b) s back hit the car, but she did not sustain any pain or injury. § 87(2)(b) explained that she did not resist in anyway. She only pulled her arm once. PO Acosta pushed § 87(2)(b) to the van and was going to push her inside, but a female officer, identified through this investigation as PO Maritza Acosta, (described by § 87(2)(b) as a Hispanic, blonde hair, 5'6", 140lbs, in her

thirties, dressed in uniform) asked her for identification. Another male police officer (described by § 87(2)(b) as dark skin Hispanic, black hair, 38 years-old, 130lbs), who was identified through this investigation as Sgt. Alberto Martinez, was already inside of this van interacting with other students.

§ 87(2)(b) was taken to a trailer in her school's parking lot. § 87(2)(b) watched PO Acosta complete her summons for disorderly conduct. § 87(2)(b) experienced an anxiety attack while she was in the van and an ambulance was called to the school. However, § 87(2)(b) refused to go to the hospital. § 87(2)(b) sustained a sprained ankle prior to her interaction with PO Acosta. She sustained additional pain in her ankle as a result of her interaction with PO Acosta. § 87(2)(b) explained that if she had stopped to talk with PO Daniel Acosta she would have arrived to school much later and did not see a reason to stop. She knew that it would have taken over an hour to process her as a truant.

Witness: § 87(2)(b)

Telephone Statement

On January 28, 2010, § 87(2)(b) was contacted by telephone and she provided the following account. On October 18, 2010, at 9:00 a.m., § 87(2)(b) left a store with § 87(2)(b) and they were walking to school. When they exited the store, a male police officer, identified through the investigation as PO Daniel Acosta, was interacting with two male students. As the two girls walked by him, without cause, PO Acosta grabbed § 87(2)(b) by the arm, and slammed her on the ground. PO Acosta then slammed § 87(2)(b) against a nearby car and then placed her into a police van. Both girls were transported to a truancy van located at § 87(2)(b). § 87(2)(b) had no interaction with PO Acosta. They were eventually allowed to attend school after § 87(2)(b) was issued a summons (encl. 6). § 87(2)(b) was unable to schedule an appointment because she wanted to first speak with her mother. § 87(2)(b) stated that she would call the investigator back to schedule the appointment. After § 87(2)(b) did not call investigator, three additional telephone calls were made to her; messages were either left on her voicemail or she was unable to schedule an appointment.

NYPD Statement(s):

Subject Officer: PO DANIEL ACOSTA

- *PO Daniel Acosta is a § 87(2)(b).*
- *On October 18, 2010, PO Daniel Acosta worked a tour of 7:00 a.m. to 3:00 p.m., with Sgt. Alberto Martinez and PO Maritza Acosta in marked van 5832. PO Acosta was dressed in uniform.*

Summons

On October 18, 2010, at approximately 9:15 p.m., in the vicinity of West 230th Street and Godwin Terrace, § 87(2)(b) was issued a summons for disorderly conduct (encl. 7).

Memo Book

At 9:15 a.m., a desk appearance summons was issued to § 87(2)(b) a truant. When PO Acosta stopped § 87(2)(b) she stated, "Fuck that shit. I'm not going anywhere" and flailed her arms (encl. 8a-d).

CCRB Statement

On March 22, 2011, PO Daniel Acosta was interviewed at the Civilian Complaint Review Board (encl. 9a-d). On October 18, 2010, PO Daniel Acosta observed § 87(2)(b) walking with two female and they were all late. The location of the stop is where he normally stops truants. PO Acosta had not been watching § 87(2)(b) before stopping her and was unaware of where she was coming from or whether she had been specifically walking in the direction of § 87(2)(b). PO Daniel Acosta did not know how far she had been from school. PO Daniel Acosta did not know how late § 87(2)(b) had been for school; he knew that school was in session.

PO Daniel Acosta exited his van and could not account for what his partners were doing because there were other truants already inside the van. PO Acosta approached § 87(2)(b) and her friends alone with his arms extended wide open saying, "Excuse me ladies." PO Acosta stood directly in front of the girls and § 87(2)(b) stated, "Nah fuck that shit. I'm not going anywhere." PO Daniel Acosta did not recall his exact words, but he told § 87(2)(b) that she was late and had to enter the truancy van. § 87(2)(b) walked next to PO Daniel Acosta's arm and swatted his hand out of her path. § 87(2)(b) walked two feet before PO Daniel Acosta turned and grabbed § 87(2)(b) by the elbow and stated that she had to go with him; he applied no additional force. He did not recall which elbow was grabbed. § 87(2)(b) moved her body from side to side in order to get away. § 87(2)(b) fell down on her own accord as a result of trying to move away. § 87(2)(b) landed on her buttocks and probably got on her knees in order to get back on her feet. PO Daniel Acosta grabbed § 87(2)(b) by the shoulders and guided her to the van. PO Daniel Acosta did not grab § 87(2)(b)'s clothing at her chest. § 87(2)(b) continued to resist, once on her feet, by stiffening her body and trying to plant her feet to the ground. PO Acosta did not have to place her on any surfaces including a car to gain her compliance. § 87(2)(b) did not complain of pain to her knees or ankle. He did not slam § 87(2)(b) against a car or van causing her to hit her back. PO Daniel Acosta's partners did not assist him with gaining § 87(2)(b)'s compliance. PO Daniel Acosta guided § 87(2)(b) to his van and she sat on the steps leading inside the van because she still did not want to enter it. Sgt. Alberto Martinez exited the van and instructed § 87(2)(b) to enter the van. § 87(2)(b) did not continue to resist. However, § 87(2)(b) called PO Daniel Acosta a "fucking asshole" and additional curse words he didn't recall; he had no reaction to her. § 87(2)(b) was subsequently taken to the truancy center behind § 87(2)(b) which consists of two trailers. PO Daniel Acosta did not know what happened to § 87(2)(b)'s friends, but knew there were no issues with gaining their compliance. At the truancy center § 87(2)(b) stated that she was experiencing trouble breathing because of asthma. An ambulance was called, but PO Daniel Acosta did not know what happened when the ambulance arrived because he had to respond to an assault in progress. § 87(2)(b) was left in the truancy center with PO Maritza Acosta.

Witness Officer: SGT. ALBERTO MARTINEZ

- *PO Alberto Martinez is a § 87(2)(b).*
- *On October 18, 2010, Sgt. Martinez worked a tour of 6:00 a.m. to 2:57 p.m. with PO Maritza Acosta and PO Daniel Acosta in the youth division. He was assigned to marked van 5832 and he was dressed in uniform.*

Memo Book

Sgt. Martinez has not created any memo book entries regarding this incident (encl. 10a-c).

CCRB Statement

On April 15, 2011, Sgt. Alberto Martinez was interviewed at the Civilian Complaint Review (encl. 11a-b). Board. On October 18, 2010, Sgt. Martinez and PO Daniel Acosta and PO Maritza Acosta were stopping truants and taking them to school. While the officers were double parked at West 230th Street, they observed § 87(2)(b) walking down the street with a female, identified through the investigation as § 87(2)(b). Sgt. Martinez did not recall whether they had just left a store or where they were coming from. They were walking in the direction of school, which was four blocks away. School had been in session, but Sgt. Martinez did not recall how late they were. PO Daniel Acosta was assigned to stopping students at that location while Sgt. Martinez and PO Maritza Acosta were inside the van. The windows to the van were up so Sgt. Martinez did not hear any conversation between PO Daniel Acosta and § 87(2)(b). Sgt. Martinez kept a constant watch over PO Daniel Acosta.

As § 87(2)(b) was walking down the street, PO Daniel Acosta extended his hand to his side to indicate to § 87(2)(b) that he wanted her to stop. § 87(2)(b) approached PO Acosta and either pulled his hand or moved it out of her way. PO Acosta then grabbed her by the left elbow and she lost her balance. PO Daniel Acosta quickly grabbed her other arm and kept her from falling. At this time, PO Maritza Acosta and Sgt. Martinez got out the van to assist PO Acosta. § 87(2)(b) was cursing, but Sgt. Martinez did not recall her remarks. PO Daniel Acosta placed § 87(2)(b) against a nearby car; she was not slammed. PO Acosta brought her to the truancy van before PO Maritza Acosta and Sgt. Martinez could offer their assistance. § 87(2)(b) made no complaints about an injury to her ankle. PO Daniel Acosta did not grab § 87(2)(b)'s clothing at her chest. PO Maritza Acosta and Sgt. Martinez had no physical interaction with § 87(2)(b) and § 87(2)(b) were eventually transported to the truancy center at § 87(2)(b).

Witness Officer: PO MARITZA MARTINEZ

- *PO Maritza Martinez is a § 87(2)(b)*
- *On October 18, 2010, PO Maritza Martinez worked a tour of 7:05 a.m. to 3:40 p.m., as a youth officer with PO Daniel Acosta and Sgt. Alberto Martinez in van 5832. PO Maritza Martinez was dressed in uniform.*

Memo Book

PO Maritza Martinez did not create any memo book entries regarding this incident (encl. 10a-c).

CCRB Statement

On April 15, 2011, PO Maritza Martinez was interviewed at the Civilian Complaint Review (encl. 11a-b) Board. PO Maritza Acosta did not have an independent recollection of this incident. PO Maritza Acosta was shown a photograph of § 87(2)(b) and that assisted her recollection. On the day in question, PO Maritza Acosta was operating a marked police van when PO Daniel Acosta decided to stop two girls who were standing in front of a grocery store at West 220th Street and Broadway. There were six additional youths in front of the store hanging around. School had been in session, but PO Maritza Acosta did not recall for how long. PO Maritza Acosta did not recall the name of the store. PO Daniel Acosta exited the van while PO Maritza

Acosta and Sgt. Martinez remained inside. PO Maritza Acosta heard PO Acosta ask the girls if they were late for school and they said they had been late. PO Maritza Acosta did not hear any additional conversation because she remained in the van and the windows were rolled up. The van was one car length and a couple of feet away. There were truants already in the van that PO Maritza Acosta was speaking with.

At some point, PO Maritza Acosta looked towards PO Acosta and saw one of the girls, § 87(2)(b) trying to walk past him. § 87(2)(b)'s friend had remained calm and remained complaint throughout the incident. PO Daniel Acosta had his arms extended from his side. PO Maritza Acosta heard § 87(2)(b) shout, "I don't fucking think so" and observed her raise her arms in the air. PO Acosta continued to speak to § 87(2)(b). PO Maritza Acosta did not observe him use any force against her. PO Maritza Acosta did not know if PO Daniel Acosta grabbed any part of Ms. § 87(2)(b)'s body. PO Maritza Acosta did not witness him grab her at the chest. § 87(2)(b) then fell for unknown reasons. PO Maritza Acosta did not know what caused § 87(2)(b) to fall and did not know if there had been any physical interaction between her and PO Daniel Acosta before her fall. PO Maritza Acosta did not maintain a constant view of PO Daniel Acosta.

PO Maritza Acosta got out of the car to assist PO Acosta. § 87(2)(b) was screaming and moving her arms around while PO Acosta tried to help her stand. § 87(2)(b) screamed, "You can't fuck touch me. I'm a girl." PO Daniel Acosta replied that he was attempting to speak to her and was not doing anything. PO Daniel Acosta placed his hands under § 87(2)(b)'s arm in order to lift her up. § 87(2)(b) continued to flail her arms and curse at PO Acosta. After PO Acosta helped § 87(2)(b) stand, he placed her against a nearby car. § 87(2)(b)'s back was facing the car, but she was not slammed against the car. PO Maritza Acosta offered her assistance by instructing § 87(2)(b) to follow her to the van and then go inside the van. § 87(2)(b) asked why she had to enter the van and PO Maritza Acosta told her that she did not have to give her an explanation. PO Daniel Acosta held her arm and § 87(2)(b) entered the van. § 87(2)(b) did not complain of experiencing any pain or injury.

§ 87(2)(b)'s friend was also placed inside the van. PO Maritza Acosta did not recall if all the additional six youths were placed inside the van. § 87(2)(b) was transported to the truancy center where she complained of difficulty breathing. An ambulance was called for her by her school's personnel, but PO Maritza Acosta did not know whether she received treatment because she had to respond to an assault involving five children.

Summons Disposition

- On July 29, 2011, a search was conducted in OCA for § 87(2)(b)'s summons disposition, but no results were found (encl. 14e).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 3, 2011 with regard to the incident (encl. 16e).

§ 87(2)(b), § 87(2)(c) (impair contract awards or
CRAA)

Civilian(s) CCRB History

- This is the first CCRB complaint filed on behalf of § 87(2)(b) (encl. 2).

Subject Officer(s) CCRB History

- PO Daniel Acosta has been a member of the service for eleven years and there is one substantiated CCRB allegation against him. (encl. [x]).
 - On May 22, 2009, the CCRB Board recommended charges against PO Daniel Acosta for a gun fired allegation. The NYC Police Department found PO Acosta guilty and he was issued command discipline.

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b), § 87(2)(a) 160.50

PO Daniel Acosta confirmed his role in this incident at the time of his CCRB interview.

Investigative Findings and Recommendations

Allegation A – Force: PO Daniel Acosta used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Acosta grabbed her clothing at her chest, and turned her around, causing her to fall on her knees. § 87(2)(b) was admittedly a truant, and she was aware that she was being stopped for the purpose of being brought to school. It is undisputed that § 87(2)(b) ignored PO Acosta's request for her to stop and instead tried walking away from him when he stood in front of her. PO Acosta maintained that he only grabbed § 87(2)(b)'s arms when she resisted. § 87(2)(b) testified that she did not sustain any pain or injury as a result of PO Acosta's use of force beyond her previously sprained ankle being exacerbated. Based

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____

Signature _____ Print _____ Date _____

Supervisor: _____

_____	_____	_____
Title/Signature	Print	Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____

_____	_____	_____
Title/Signature	Print	Date